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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

JUN 6 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-178
)	
Howard B. Dolgoff)	File No. BPH-911223ME
)	
Mark and Renee Carter)	File No. BPH-911224MD
)	
For Construction Permit for a New)	
FM Station on Channel 292A in)	
Miramar Beach, Florida)	

To: Administrative Law Judge
John M. Frysiak

REQUEST TO CERTIFY
APPLICATION FOR REVIEW

Applicants Mark and Renee Carter ("the Carters"), pursuant to Section 1.115(e)(3) of the Commission's rules, 47 C.F.R. Section 1.115(e)(3), hereby request that the presiding Administrative Law Judge certify for review by the Commission the Audio Services Division's Hearing Designation Order ("HDO") in the above-captioned proceeding.^{1/}

I. BACKGROUND

In the referenced Hearing Designation Order, the Chief of the Audio Services Division erroneously consolidated the Carters' application for comparative hearing with the application of Howard B. Dolgoff ("Dolgoff"). Dolgoff's application should instead have been dismissed for violation of the hard look rules, and/or for violation of the contour protection standards of

^{1/} DA 93-700, MM Docket No. 93-178 (released June 28, 1993).

Section 73.215 of the Commission's Rules, 47 C.F.R. Section 73.215.^{2/}

Dolgoff's application, like the Carters', was filed pursuant to Section 73.213(c)(1), which grandfathers proposals for pre-October 2, 1989 FM allocations rendered short spaced by the new minimum spacing rules which took effect on that date, provided such proposals do not exceed 3kW and 100 meters HAAT or

equivalent.^{3/} Both applicants had to proceed pursuant to the

While Dolgoff's application depicted its own service and interference contours, it did not depict the service or interference contours of WKNU(FM), or ask for processing pursuant to the directional FM antenna rules of Section 73.215.

Because pertinent contours were not depicted by Dolgoff, Dolgoff's application did not reveal that its proposed reduced radiation in "an arc towards" WKNU(FM) was along an arc insufficient in length to prevent an overlap of Dolgoff's proposed service contour by WKNU(FM)'s projected 6kW interference contour.

Because Dolgoff did not include any showing as to pertinent contours of WKNU(FM), the Chief, Audio Services Division, had to conduct a study of Dolgoff's proposal. But this staff study established only that Dolgoff's directional proposal would not cause an overlap of Dolgoff's proposed interference contour with WKNU(FM)'s existing service contour; it does not show whether WKNU(FM)'s existing or projected 6kW interference contour will overlap Dolgoff's proposed service contour.^{5/}

Dolgoff's application should have been rejected by the Chief, Audio Services Division for gross violation of the hard look requirements respecting directional FM proposals: (1) for failure expressly to request processing pursuant to the contour protection provisions of Section 73.215 of the rules; and (2) for failure to provide an exhibit depicting its own, and WKNU(FM)'s

^{5/} A copy of the staff study in question, supplied at counsel's request, is appended hereto as Exhibit 1.

protected and interfering contours despite the Commission's express addition of such an exhibit to the list of hard look requirements applicable in this proceeding.

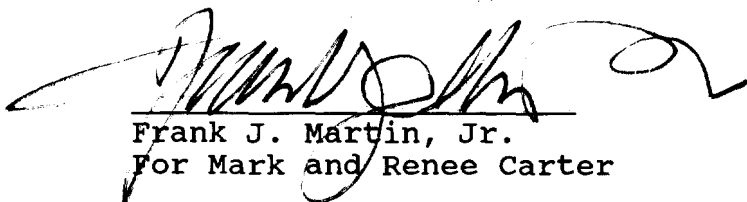
Furthermore, Dolgoff's application should have been rejected for gross failure to satisfy, and violation of, the ~~contour protection standards of Section 72.215 of the rules~~

FM proposals. The fact that the staff had to do a study of any kind is proof that the very evil sought to be prevented by the hard look rules became a reality because of Dolgoff's violation.

Moreover, there is an additional substantial question of law whether Dolgoff's application violates the contour protection requirements of Section 73.215 in that it proposes what would be a prohibited overlap of Dolgoff's proposed service contour by WKNV(FM)'s projected 6kW interference contour.

WHEREFORE, it is respectfully requested that permission to certify be granted.

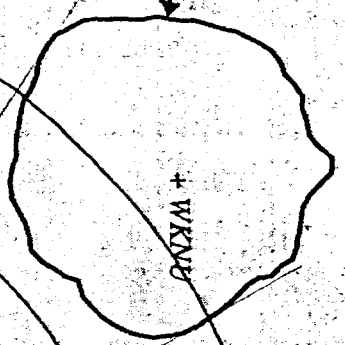
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Frank J. Martin, Jr.", is written over a horizontal line. The signature is stylized with a large, sweeping initial "F" and a long, horizontal stroke extending to the right.

Frank J. Martin, Jr.
For Mark and Renee Carter

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60dBu (50,50) →
3kW/100 m (24MUT)



LAMBERT EQUAL AREA MAP

50



0

KILOMETERS

ENGINEER:

DELAHUNT

DATE:

03/30/93

THE FOLLOWING IS A LIST OF THE DATA WHICH APPEARS ON THE ABOVE MAP

BOTTOM LATITUDE: 29.34 TOP LATITUDE: 31.43 LEFT LONGITUDE: -87.68 RIGHT LONGITUDE: -84.93

MAP: ENLARGED CONUS MAP PROJECTION: Lambert Equal-area CENTER LAT: 30.39 LONG: -86.31 GRID SPACING: 0.00

KILOMETERS / INCH = 29.22

PLOT MADE ON : 30 March, 1993 15:04 HOURS

call	serv	application no.	contour	chan	erp	haat	rcamsl	coverage area	A1	A7
		VACANT VACANT	60.0 dBu (50,50)	292	3.000	100.0	102.0	1851.0 sq km	0	0
		VACANT VACANT	40.0 dBu (50,10)	292	3.000	100.0	102.0	18141.6 sq km	0	0
		VACANT VACANT	34.0 dBu (50,10)	292	3.000	100.0	102.0	30320.6 sq km	0	0
NEW	FM	BPH911223ME	60.0 dBu (50,50)	292	6.000	100.0	102.0	2397.8 sq km	0	0
NEW	FM	BPH911223ME	40.0 dBu (50,10)	292	6.000	100.0	102.0	22592.6 sq km	0	0
NEW	FM	BPH911223ME	34.0 dBu (50,10)	292	6.000	100.0	102.0	38024.0 sq km	0	0
WKNU	FM	BLH6349	60.0 dBu (50,50)	292	<u>3.000</u>	<u>100.0</u>	146.0	1772.8 sq km	0	0

¹ - Number of radials where free space equation was used for field strength calculations.

Number of radials where a HAAT less than 30 meters was adjusted to 30 meters.

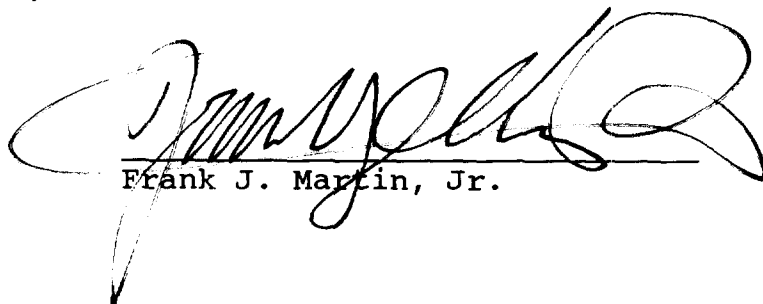
CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July, 1993, a copy of the foregoing Request to Certify Application for Review has been served by U.S. mail, postage paid, upon the following:

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Frank J. Martin, Jr.

* By hand delivery